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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1932

## No.

THE STATE OF MINNESOTA, PETITIONER,

*vs.*

GEORGE BLASIUS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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**IN DISTRICT COURT OF DAKOTA COUNTY, STATE OF MINNESOTA**

THE STATE OF MINNESOTA

against

GEORGE BLASIUS, Defendant

CITATION

The State of Minnesota to the defendant above named:

Whereas, the County Auditor of said County did on the 28th day of July, 1930, file with the Clerk of the Court above named a copy of the revised list of personal property taxes delinquent for the year 1929 as provided by law, and it appears from said copy that the sum of Forty-three and 84/100 ($43.84) Dollars, including penalty as provided by law, stands assessed against you as personal property taxes for said year and that the same are delinquent and unpaid.

Now Therefore, you are hereby cited and required to be and appear before the District Court above named on the first day of the next General Term thereof commencing on [fol. 2] the 10th day of November, 1930, at 10 o'clock A. M., at the Court House in the City of Hastings in said County, then and there to show cause, if any there be, why you should not pay said taxes and penalty; and if you fail to pay said taxes and penalty and all accrued costs thereon to the sheriff of said county on or before said time or at said time fail to show sufficient cause for said non-payment of said taxes, penalty and accrued costs, judgment will be entered against you for said amount of said taxes and penalty together with all accrued costs and disbursements.

Witness the Honorable W. A. Schultz, Judge of said Court, and the Seal thereof this 7th day of August, 1930.

T. S. Ryan, Clerk. (Seal.)

[fol. 3] IN DISTRICT COURT OF DAKOTA COUNTY

In the Matter of Enforcement of Personal Property Tax for the Year 1929 as Against GEORGE E. BLASIUS

STATE OF MINNESOTA, Plaintiff,

v.

GEORGE E. BLASIUS, Defendant

ANSWER

Comes now George E. Blasius and for his Answer in the above entitled matter states:

I

That he is a resident of South St. Paul, Dakota County, Minnesota, and is and has been for several years immediately last past engaged in the business of a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota.

That as such trader in livestock he goes upon the market at said place and bids on the livestock which meets the requirements of his trade, and makes his purchases upon said [fol. 4] bid in the face of open competition at said place.

That the class of livestock which the said George E. Blasius buys on said market are those that go immediately thereafter into the hands of feeders or growers within and without the State of Minnesota, and principally beyond the borders of said State, and said answering defendant, during the time that he has been operating upon said market, has never handled or dealt in cattle or other livestock for immediate slaughter.

That the yards of the St. Paul Union Stockyards Company, the place where said answering defendant carries on his operation as such trader, is that place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock that reaches said yards from day to day. That said livestock that so arrives at said yards comes from the State of Minnesota and other states throughout the northwest, and that the livestock which this answering defendant deals in comes from the above mentioned terri-

tory and finds its final resting place in the said feed lots of Illinois, Iowa, Indiana and other southern and eastern states.

That on the 1st day of May, 1929, this answering defendant had in his possession at the said stockyards in South St. Paul 11 head of cattle for which the assessor and [fol. 5] Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651.00), with an assessed valuation of Two Hundred Seventeen Dollars ($217.00). That all of the said cattle which said answering defendant then had in his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and all of said cattle at said time and place were handled by this answering defendant in commerce between states. That is to say, that all of said cattle were such as were being transported from the west to the east and south and were being handled by said answering defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the handling of said cattle by said answering defendant is a necessary factor in the center of this chain of commerce from the west to the east and south, and that because of the fact that said livestock was a part of said commerce the same are not subject to taxation by the authorities of the State of Minnesota.

II

III

IV

[fol. 6] Wherefore this answering defendant asks this Court for judgment ordering and directing that all property listed for taxation upon said tax list be stricken therefrom and the tax placed thereon be reduced accordingly, * * * and for such other and further relief as to this Court may seem just and equitable.

D. L. Grannis, Attorney for Defendant, F. J. Schult Building, So. St. Paul, Minnesota.

(Acknowledged.)

IN DISTRICT COURT OF DAKOTA COUNTY

**Settled Case**

The above entitled matter came on for hearing before Hon. W. A. Schultz, Judge, without a jury, on the 27th day of January, 1931; and Harold E. Stassen, Esquire, appeared as attorney for the State of Minnesota; and D. L. Grannis, Esquire, appeared as attorney for George E. Blasius.

State's Exhibits A and B marked for purpose of identification.

OFFERS IN EVIDENCE

By Mr. Strassen: Offer in evidence State's Exhibit A, being delinquent tax list, in so far as it pertains to the delinquent personal property tax matter of George E. Blasius.
[fol. 7] The Court: Received.

By Mr. Stassen: Offer in evidence Plaintiff's Exhibit A, being the citation of the Clerk of Court to defendant, George E. Blasius.

By Mr. Grannis: No objection.

The Court: Received.

State's Exhibit C marked for the purpose of identification.

By Mr. Grannis: No objection to its admission.

Mr. Stassen: Offer in evidence State's Exhibit C, being assessor's detailed listing of property of George E. Blasius, and it is understood that upon this Exhibit C the judgment was entered, subject to the revision of the local board of review and county board.

By Mr. Grannis: Yes; but it was not revised.

By Mr. Stassen: Mr. Blasius was cut down some—these are filed as the assessor turned them in I understand.

By Mr. Grannis: There is the cut—have you any objection to putting this in?

By Mr. Stassen: That is all right—we will substitute that then—there is no use in having two identical copies.

By Mr. Grannis: They are identical.

Mr. Stassen: Yes; that is the identical copy.

State's Exhibit D marked for the purpose of identification.

[fol. 8] The Court: State's Exhibit C may be received in evidence.

Mr. Grannis: Then we will put that in, and that is a copy of the cut.

Mr. Stassen: This is received as indicating the cut made by the County Board.

By Mr. Grannis: I would rather consent to having you put that in as your first exhibit.

Mr. Stassen: The State rests.

Defendant's Exhibit 1 marked for the purpose of identification.

The Court: Received.

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GEORGE E. BLASIUS, being duly sworn as a witness on his own behalf, testified on direct examination as follows:

Examined by Mr. Grannis:

Q. What is your name?
A. George E. Blasius.
Q. Where do you reside?
A. South St. Paul, Dakota County, Minnesota.
Q. For how long have you resided in South St. Paul?
A. About sixteen years.
Q. What is your business?
A. Cattle business.
Q. And when you say that you are in the cattle business explain what kind of cattle business you are in?
[fol. 9] A. We are dealers in the cattle business—dealers in cattle, we buy and sell on commission and on order.

* * * * * * *

Q. Now, there is also assessed against you at that same time ten head of cattle—did you own those cattle at that time?
A. Yes.
Q. That is on May 1, 1929?
A. Yes. I bought them the night before.
Q. What was their reasonable market value?

(Pause.)

By Mr. Grannis: I withdraw that.

Q. Do you make any objection to the value of cattle, as fixed by the assessor on the assessor's list?

A. No.

Q. So there is no question as to the value of the cattle?

A. No.

. . . . . .

[fol. 10] Q. Now, tell the Court just how you operate in your cattle dealings there, will you please, how you buy and sell?

A. We buy from commission firms and take them to our own pens allotted by the Stockyards Company, and sell for a profit to anybody who comes near. Most of our cattle are sold to be shipped out of the State, to Illinois and Iowa.

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STIPULATIONS AS TO SHIPMENTS

By Mr. Grannis: If the Court please, on that point, we are very anxious, both the State and the Live Stock Exchange, to have this question presented formally to the Court, and that is, that these cattle which Mr. Blasius had on May 1 were cattle that were purchased from without the State and consigned to the South St. Paul market, and

It Is Stipulated and Agreed, that these cattle which George E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, or they were purchased from points within the state, [fol. 11] consigned to the market at South St. Paul, and purchased as he testified to, and shipped to points without the state.

The Court: They were never purchased within the state and shipped to points within the state. If they were purchased inside the state they were shipped outside the state.

By Mr. Stassen: I will stipulate and agree to that with this provision: It is understood that Mr. Blasius purchased these cattle at the South St. Paul market after the original shipment. Mr. Blasius, in other words, did not go out into the state and make the purchase.

Mr. Grannis: We will stipulate to that.

Mr. Stassen: Isn't the true situation that these cattle were not purchased before they were shipped?

Mr. Grannis: When I refer to the word "purchase" as cattle being purchased outside the state I do not mean to say that Mr. Blasius purchased the cattle outside the state or that Mr. Blasius purchased the cattle in the state outside the stockyards. I refer to the word "purchase" as they were purchased by some person dealing in cattle and shipping to the stockyards, and when the cattle arrived at the stockyards they were offered for sale on the market at that place, and Blasius made the purchase.

* * * * * * *

[fol. 12] STIPULATION AS TO CERTAIN FACTS

In addition to the stipulation heretofore entered into between the parties hereto,

It is further stipulated and agreed that the defendant, George E. Blasius, at the time of the commencement of this action, was a resident of South St. Paul, Dakota County, Minnesota, and had been for several years previous thereto, and was engaged in the business of a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota; that as such trader in livestock it was his business practice to go upon the market at said place and bid upon and buy the livestock to meet the requirements of his trade, and he made said purchases in the face of open competition at said market.

That the yards of the St. Paul Union Stockyards Company, where defendant carried on his said operations as such trader, is a place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock that reaches said yards from day to day.

[fol. 13] That at the opening of business on the 1st day of May, 1929, the eleven head of cattle in question were owned by the said George E. Blasius and had not been entered with any carrier for shipment to any point, but were being offered for sale on said market, and on said 1st day of May seven of said eleven head of cattle were sold and immediately shipped by the purchaser to points out of the State of Minnesota; that the other four head of cattle were

not sold by George E. Blasius until the following day when they were likewise shipped by the purchaser.

That the reasonable market value of said seven head of cattle was $60.00 apiece.

It is further stipulated and agreed that this stipulation may become a part of the record in this action with the same force and effect as if made at the date of the trial.

Dated this 15th day January, 1932.

(Signed) H. E. Stassen, Attorney for County of Dakota. (Signed) D. L. Grannis, Attorney for Defendant.

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IN DISTRICT COURT OF DAKOTA COUNTY

STIPULATION SETTLING CASE

It is hereby stipulated and agreed, by and between the parties to the above entitled action, that the foregoing proposed [fol. 14] case, consisting of the typewritten transcript of the evidence may be taken as conformable to the truth and as containing all of the evidence offered and introduced on the trial of said cause, except the exhibits, and all objections, rulings and other proceedings of said trial, and that the same may be settled and allowed as a settled case herein by the Hon. W. A. Schultz, the Judge who tried said case.

Dated at Hastings, Minnesota, this 20th day of January, 1932.

H. E. Stassen, Attorney for Plaintiff. D. L. Grannis, Attorney for Defendant.

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IN DISTRICT COURT OF DAKOTA COUNTY

ORDER SETTLING CASE

I hereby certify that the foregoing action, consisting of the typewritten transcript, has been examined by me and found conformable to the truth, and to contain all the evidence offered or introduced on the trial of this action, except the exhibits, and all objections, rulings and all other proceedings of such trial, and I hereby settle and allow the [fol. 15] same as a settled case herein.

Dated at Hastings, Minnesota, this 20th day of January, 1932.

W. A. Schultz, Judge of said District Court.

IN DISTRICT COURT OF DAKOTA COUNTY

## Findings of Fact and Conclusions of Law

The above entitled matter came on for trial before this Court, and Harold Stassen, Esquire, appeared as attorney for the State of Minnesota and D. L. Grannis, Esquire, appeared as attorney for George E. Blasius: and evidence having been adduced and the matter having been duly argued and submitted, and the Court having considered the same, on this 20th day of April, 1931,

### FINDS AS FACTS

That the first, second and third paragraphs of paragraph I of the answer have, in all things, been proved.

That the fourth paragraph of paragraph I of said answer, ending with the word "'day" on page 2, third line, has, in all things, been proved.

That said parts of said answer are hereby made a part of these Findings.

[fol. 16] That it was stipulated and agreed by and between counsel for both parties at the trial as follows:

"It Is Stipulated and Agreed, that these cattle which George E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, or they were purchased from points within the state, consigned to the market at South St. Paul, and purchased as he testified to, and shipped to points without the state."

and which stipulation the Court finds are the facts, and makes them a part of the findings.

That the regular course of business of the above named defendant was that practically all cattle purchased by said defendant were sold and shipped to non-residents of the state, and it was unusual to sell and to ship to residents of the state, although selling and shipping to residents did sometimes occur.

That on the 1st day of May, 1929, defendant had in his possession at South St. Paul eleven head of cattle for

which the assessor and Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651), with an assessed valuation of Two Hundred Seventeen Dollars ($217). That all of the said cattle which said answering defendant then had in [fol. 17] his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and were such as were usually transported from the West to the East and South, and were being handled by said answering defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the handling of said cattle by said answering defendant is a necessary factor in the center of chain of commerce from the west to the East and South.

. . . . . .

The Court further finds, that the rate at which said property was taxed for the year 1929 was .09270.

That the total assessment against said defendant is, and should be fifteen and 85/100 Dollars ($1.85).

The Court Further Finds, that the true and full value of said property is also the reasonable market value thereof.

CONCLUSIONS OF LAW

That the cattle referred to in paragraph I of said Answer are cattle that were in inter-state commerce on May 1, 1929, and the above named defendant at said time was also engaged in interstate commerce, and said cattle are [fol. 18] not taxable.

. . . . . .

That the plaintiff is entitled to judgment against said defendant for said sum of Fifteen and 85/100 Dollars ($15.85), without costs or disbursements.

Let judgment be entered accordingly.

W. A. Schultz, District Judge.

IN DISTRICT COURT OF DAKOTA COUNTY

MEMORANDUM

As to the question of Interstate Commerce:

Coe v. Erroll, 166 U. S. 517, 29 L. Ed. 715.
Swift & Co. v. U. S., 196 U. S. 375, 45 L. Ed. 518.
Stafford v. Wallace, 66 L. Ed. 735.
Lemke v. Farmers Grain Co., 66 L. Ed. 458.
Carson Petroleum Co. v. Vial, 73 L. Ed. 626, 279 U. S. 95.
State v. Hughes Brothers, 163 Minn. 436, 71 L. Ed. 359.

The case of Myers v. Baltimore Co., 83 Md. 385, 35 Atl. 144, cannot be reconciled with the above cases and probably will no longer be followed by the United States Courts.

* * * * * * *

Schultz, J.

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[fol. 19] IN DISTRICT COURT OF DAKOTA COUNTY

NOTICE OF MOTION FOR AMENDMENT OF FINDINGS AND CONCLUSIONS

To D. L. Grannis, Esq., attorney for defendant:

You will please take notice that at a special term of the above named court to be held in the court house at the City of Hastings in said County and State, on Saturday, the 20th day of June, 1931, at 10:00 o'clock in the forenoon, the above named plaintiff will, at the opening of the court on that date or as soon thereafter as counsel can be heard, move the court for an amendment of the Findings of Fact in the above entitled matter, pursuant to the amended Findings of Fact hereto attached and made a part hereof. If said motion is granted, the plaintiff will then move the court for an amendment of the Conclusions of Law pursuant to the Amended Conclusions of Law hereto attached and made a part hereof.

The plaintiff will then move the court that judgment be entered in accordance with said amended Findings of Fact and Conclusions of Law.

Respectfully yours, Harold E. Stassen, 115 Grand Avenue, So. St. Paul, Minnesota.

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[fol. 20] In District Court of Dakota County

## Amended Findings of Fact

The above entitled matter came on for trial before this Court, and Harold Stassen, Esquire, appeared as attorney for the State of Minnesota, and D. L. Grannis, Esquire, appeared as attorney for George E. Blasiu and evidence having been adduced and the matter hav.. been duly argued and submitted, and the Court having considered the same, on this 20th day of April, 1931,

### Finds as Facts

That the first, second and third paragraphs of paragraph I of the answer have, in all things, been proved.

That the fourth paragraph of paragraph I of said answer, ending with the word "day" on page 2, third line, has, in all things, been proved.

That said parts of said answer are hereby made a part of these Findings.

That it was stipulated and agreed by and between counsel for both parties at the trial as follows:

"It is stipulated and agreed that these cattle which George E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul Market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, [fol. 21] or they were purchased from points within the state, consigned to the market at South St. Paul, and purchased, as he testified to, and shipped to points without the state,"

and which stipulation the Court finds are the facts, and makes them a part of these Findings.

That the regular course of business of the above named defendant was that practically all cattle purchased by said defendant were sold and shipped to non-residents of the state, and it was unusual to sell and to ship to residents of the state, although selling and shipping to residents did sometimes occur.

That on the 1st day of May, 1929, defendant had in his possession at South St. Paul eleven head of cattle for which the assessor and Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651.00), with an assessed valuation of Two Hundred Seventeen Dollars ($217.00). That all of the said cattle which said answering defendant then had in his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and were such as were usually transported from the West to the East and South, and were being handled by said answering defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the [fol. 22] handling of said cattle by said answering defendant is a necessary factor in the center of chain of commerce from the West to East and South.

That the answering defendant purchased said eleven cattle on the South Saint Paul Market after the original portion of their journey from their source to said market had been completed; that on the first of May, 1929, the answering defendant was the sole owner of said eleven (11) cattle and the sale and shipment by him did not occur until after the first of May, 1929; that on the first of May, 1929, said cattle had not been entered with any carrier for shipment to any point and their final destination was not fixed.

* * * * * * *

The Court further finds that the rate at which said property was taxed for the year 1929 was .09270.

That the total assessment against defendant on the above three items is and should be $15.85.

The Court further finds that the true and full value of the eleven cattle herein, being the article referred to in Line 12 of State's Exhibit C is $651.00, one-third full and true value $217.00, that applying the rate at which said property was taxed to the assessed valuation, the tax would be $20.12.

The Court further finds that the true and full value of [fol. 23] of said property is also the reasonable market value thereof.

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(Title of Cause)

AMENDED CONCLUSIONS OF LAW

That the cattle referred to in paragraph one (1) of said answer are taxable by the State of Minnesota as of May 1, 1929.

* * * * * * *

That the plaintiff is entitled to judgment against said defendant for the said sum of $35.97 without costs or disbursements.

Let judgment be entered accordingly.

——, District Judge.

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IN DISTRICT COURT OF DAKOTA COUNTY

ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter came on for hearing before this Court on a notice of motion on part of the plaintiff for an amendment of findings of fact and conclusions of law in the above entitled action; and H. E. Stassen, Esquire, appeared as attorney for the plaintiff, and D. L. Grannis, [fol. 24] Esquire, appeared as attorney for the defendant; and a further stipulation having been entered into dated January 15, 1932, and which it was agreed might become a part of the record in said action with the same force and effect as if made at the time of trial; and the matter having been submitted, and the Court having duly considered the same, on this 22nd day of January, 1932, it is

Ordered that said motion be, and hereby is, in all things, granted, except as to the last five lines of the second to the last paragraph of page 2 of the proposed amended findings beginning with the words "and the sale" and ending with the word "fixed", and the findings of fact and conclusions of law fur-

ther amended so that said findings of fact and conclusions of law be, and hereby are, amended to read as follows:

## Amended Findings of Fact

### I

That the first, second, third and fourth paragraphs of the Answer have, in all things, been proved, and are hereby made a part of these findings.

### II

That is was stipulated and agreed by and between counsel for both parties at the trial as follows:

"It is stipulated and agreed that these cattle which George [fol. 25] E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, or they were purchased from points within the state, consigned to the market at South St. Paul, and purchased as he testified to, and shipped to points without the state,"

and which stipulation the Court finds are the facts, and makes them a part of these findings.

### III

It was further stipulated that the following stipulation become a part of the record in this action with the same force and effect as if made at the date of the trial, which stipulation is hereby referred to, and the Court finds that the matters therein contained are true, and makes them a part of these findings, to-wit:

"It is further stipulated and agreed that the defendant, George E. Blasius, at the time of the commencement of this action, was a resident of South St. Paul, Dakota County, Minnesota, and had been for several years previous thereto, and was engaged in the business of a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota; that as such trader in livestock it was his business practice to go upon the market at said place and bid upon and buy the livestock to meet the requirements of his trade,

and he made said purchases in the face of open competition at said market.

"That the yards of the St. Paul Union Stockyards Company, where defendant carried on his said operations as such trader, is a place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock [fol. 26] that reaches said yards from day to day.

"That at the opening of business on the 1st day of May, 1929, the eleven head of cattle in question were owned by the said George E. Blasius and had not been entered with any carrier for shipment to any point, but were being offered for sale on said market, and on said 1st day of May seven of said eleven head of cattle were sold and immediately shipped by the purchaser to points out of the State of Minnesota; that the other four head of cattle were not sold by George E. Blasius until the following day when they were likewise shipped by the purchaser.

"That the reasonable market value of said head of cattle was $60.00 apiece."

IV

That the regular course of business of the above named defendant was that practically all cattle purchased by said defendant were sold and shipped to non-residents of the state, and it was unusual to sell and to ship to residents of the state, although selling and shipping to residents did sometimes occur.

V

The Court further finds that the defendant bought the eleven head of cattle from commission firms to whom said cattle were consigned for sale by persons who purchased said cattle; that the commission firms at the time of sale to defendant were not owners of the cattle, but had them for sale, as aforesaid, and were to remit the net proceeds of sale to their consignors; that the cattle came to the yards consigned to the commission firms for sale at the South [fol. 27] St. Paul market from some point outside the state; that said shippers or consignors had no intent to transport said cattle to any other place than South St. Paul, nor did they have any intent that such cattle should be transported to any particular place after their sale to said defendant.

VI

That the said defendant is known as a "trader"; that a "trader" is essential to the sales to farmers and feeders, and in this particular case, as in most cases, the sale by the "trader" was made locally to a non-resident, and the cattle were immediately shipped by the non-resident purchaser to points outside the State of Minnesota.

VII

That the said eleven head of cattle, after their purchase from the commission men by the said defendant, were placed in pens leased by the defendant from the Stockyards Company, and after their said purchase by him and up to the time of the re-sale by him, were his own individual property, and that they were at absolute and complete rest in the yards at South St. Paul at which place defendant paid for their feed and water up to the time of re-sale by him, and said cattle from the time they were purchased by him and up to the time of re-sale by him were a part of the [fol. 28] general mass of cattle in the State and locally owned.

VIII

That neither defendant nor his said eleven head of cattle were subject to any discrimination in favor of cattle solely the product of the State of Minnesota; that said eleven head of cattle were assessed as a part of the general mass of property in the State at the regular period of assessment for such property, and in the usual manner; that the transportation of said eleven head of cattle ceased after they were purchased from the commission men and up to and until they were again resold for shipment outside the state; that said cattle were so held in the yards for sale the same as any other local owner of cattle might hold the cattle for sale; that said cattle were held at the pleasure of defendant to be sold to the highest bidder, and if a bid was not acceptable or high enough for him said cattle were held until such time as defendant wanted to sell them, and at no time was defendant compelled to sell to any particular bidder.

That said cattle were not taxed because they came from another state, but were taxed only after they were at rest

in the state, at their then place of destination, locally owned and controlled, a part of the general mass of property within the State, and a commodity in the open market at South St. Paul; that said cattle were assessed at the [fol. 29] same fair and reasonable rate, and in the same fair and reasonable manner as other property in the State of Minnesota, and that said assessment did not in any way attempt to hinder or regulate interstate commerce, and did not discriminate between the products of the different states.

IX

That said eleven head of cattle were consigned to the commission men for the purpose of sale in the yards at South St. Paul, with no thought in the mind of the consignor as to where cattle might finally go from South St. Paul, and at the time they were taxed they were not in the hands of the original shipper, but were locally owned and controlled by the defendant; that while said defendant was the sole owner and controller of said cattle they were not held for the purpose of promoting their safe or convenient transit, but were held and purchased by the defendant because he desired to make a profit for himself at their re-sale; that defendant would sell to any one, resident or non-resident, provided he was the highest bidder; that he did not buy said cattle for the purpose of export or shipment to another State, but solely for his own profit, and at no time were said cattle held by him with the intent or purpose of shipping them to another state, but solely with the intent and purpose of making a profit for [fol. 30] himself in the handling of said cattle.

X

That on the 1st day of May, 1929, defendant had in his possession at South St. Paul eleven head of cattle for which the assessor and Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651.00), with an assessed valuation of Two Hundred Seventeen Dollars ($217.00). That all of the said cattle which said defendant then had in his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and were such as were usually transported from the West to the East

and South, and were being handled by said defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the handling of said cattle by said defendant is a necessary factor in the center of chain of commerce from West to the East and South.

That the defendant purchased said eleven cattle on the South St. Paul Market after the original portion of their journey from their source to said market had been completed; that on the first of May, 1929, the defendant was the sole owner of said eleven cattle.

* * * * * * *

[fol. 31] The Court further finds that the true and full value of the eleven cattle herein, being the article referred to in Line 12 of State's Exhibit C, is $651.00, one-third full and true value $217.00, that applying the rate at which said property was taxed to the assessed valuation, the tax would be $20.12.

The Court further finds that the true and full value of said property is also the reasonable market value thereof.

Amended Conclusions of Law

1. That the cattle referred to in paragraph one (1) of said answer are taxable by the State of Minnesota as of May 1, 1929.

* * * * * * *

3. That the plaintiff is entitled to judgment against said defendant for the said sum of Thirty-five and 97/100 Dollars ($35.97), without costs or disbursements.

Let judgment be entered accordingly.

W. A. Schultz, District Judge.

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In District Court of Dakota County

Memorandum

Personal property taxes are assessed against the person and not against the property.

Dunnell's Digest, Sec. 9263.

[fol. 32] The taxes in question do not in any way affect, or any manner restrain interstate commerce, but if it is affected, it can only be affected in a very indirect and remote manner, and not in such a way as to be confiscatory or unduly burdening to such commerce.

Anderson v. U. S., 43 L. Ed. 300.
Hopkins v. U. S., 43 L. Ed. 290.
Brow v. Houston, 29 L. Ed. 257.
Woodruff v. Parkham, 19 L. Ed. 382.
Public Utilities Comm. v. Landon, 63 L. Ed. 577.

In the words of Chief Justice Taft, in the case of Stafford v. Wallace, 66 L. Ed. page 745:

"Some of them are tax cases. As to them it is well to bear in mind the words of the Court in the Swift case (p. 400):

'But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress where such interference is deemed necessary for the protection of commerce among the states.'

"Thus take the case of Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615, 33 Sup. Ct. Rep. 299. * * * it was held that property in a state which its owner intends to transport to some other state, but which is not in actual transit, and in respect to the disposition of which he may change his mind, is not in interstate commerce just because of the intention of its owner, and may, therefore, be taxed by the state where it is. The court brought out the distinction between such cases and this in the remark (p. 516):

'The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power, in view of its nature and operation must be deemed to be in conflict with this paramount authority.' "

Swift & Company v. U. S., 196 U. S. 375, 49 L. Ed. 518.
[fol. 33] Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615.
Note 2 L. R. A. (N. S.) 662, Tax.
Note 55 L. R. A. (N. S.) 903, Tax.
Note 25 A. L. R. 1201.

American Steel and Wire Company v. Speed, 48 L. Ed. 538.
Pittsburgh & Southern Coal Co. v. J. W. Bates, 39 L. Ed. 538, Tax.
Anderson v. U. S., 43 L. Ed. 300.
Carson Petroleum Company v. L. C. Vial, 73 L. Ed. 626, Tax.

* * * * * * *

Schultz, J.

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[fol. 34] IN DISTRICT COURT OF DAKOTA COUNTY

JUDGMENT

The above entitled matter came on before this Court, Harold Stassen, Esq., County Attorney, appearing for the Plaintiff, and D. L. Grannis, Esq., South St. Paul, Minnesota, appearing for the Defendant, and the Court having duly made and filed its Findings of Fact and Conclusions of Law, herein.

Now Therefore, Pursuant to said Order, and on Motion of Harold Stassen, Esq., County Attorney, as attorney for the Plaintiff,

It Is Hereby Ordered, Adjudged and Decreed, That the Plaintiff have judgment against the Defendant George E. Blasius, for the sum of Thirty-five and 97/100 ($35.97) Dollars, without costs or disbursements.

Dated January 29th, 1932.

By the Court.

T. S. Ryan, Clerk of Said Court.

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[fol. 35] IN DISTRICT COURT OF DAKOTA COUNTY

NOTICE OF APPEAL

To Harold E. Stassen, attorney for the above-named plaintiff, and to T. S. Ryan, clerk of said District Court:

Please Take Notice, That the above named George E. Blasius appeals to the Supreme Court of the State of Minnesota, from the Judgment of the said District Court en-

tered herein on the 29th day of January, A. D. 1932, and from the whole thereof.

Dated First day of March, A. D. 1932.

D. L. Grannis, Attorney for Defendant.

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In District Court of Dakota County

Stipulation Waiving Bond

It Is Hereby Stipulated and Agreed, By and between H. E. Stassen, representing the State of Minnesota, and D. L. Grannis, representing George E. Blasius,

That the statutory bond necessary in a case of appeal to the Supreme Court may be, and is, hereby waived, and the said appeal shall have the same force and effect as if the statutory bond had been filed with the Clerk of said Court.

H. E. Stassen, Attorney for Plaintiff. D. L. Grannis, Attorney for Defendant.

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[fol. 36] [File endorsement omitted]

In Supreme Court of Minnesota

No. 240. 29017

State of Minnesota, Respondent,

vs.

George Blasius, Appellant

Dakota County, Loring, J.

Syllabus

1. Cattle temporarily owned by licensed dealers at the South St. Paul Stockyards as such cattle arrive and are purchased by such dealers for resale to purchasers outside the state to whom they are immediately shipped, are not subject to state taxation when such transactions are constantly recurrent. The transactions and the temporary

holding of title cannot be separated from the continuity of the flow of commerce through the yards and take on the character of that commerce which is interstate and exempt from the burden of state taxation.

2. A membership in the South St. Paul Traders' Livestock Exchange is property and subject to taxation.

Modified.

OPINION—Filed Dec. 9, 1932

LORING, J.:

This is an appeal from a judgment for personal property taxes levied upon eleven head of cattle at the South St. Paul stockyards and upon a membership in the Traders' Livestock Exchange operating at those yards. The defendant is a trader registered under the federal packers and stock yards act dealing in the buying and selling of cattle at the South St. Paul yards. The cattle in question came to the yards and were there present and owned by defendant on the first day of May, 1929. Part of them were sold on that day and part on the following day and were immediately shipped to their purchasers at points outside the state. The defendant contends that these cattle [fol. 37] when in the yards on May first, were in the flow or current of interstate commerce and that consequently a personal property tax levied on them as of the first day of May is a burden upon interstate commerce and that the state taxing power must yield to the paramount interests of that commerce. He also contends that the membership in the Exchange is not taxable property.

The first branch of the case dealing with the taxability, of the cattle presents the more difficult problem and one not free from doubt. The crucial question to be settled in determining whether personal property moving in interstate commerce is subject to local taxation is that of its continuity of transit. Carson Petroleum Co. v. Vial, 279 U. S. 95, 73 L. Ed. 626. The rule is a simple one but in the light of the decisions, a very difficult one to apply. As here presented it becomes a question whether or not the business done in the stockyards between the receipt of the livestock and its shipment therefrom is a part of inter-

state commerce and the property involved exempt from the burden of local taxation. In matters of this character involving the powers of Congress under the commerce clause we are of course controlled by the views of the Supreme Court as expressed upon issues presented to it. If we were to be guided by that court's expressions in such cases as Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615 and American Steel & Wire Co. v. Speed, 192 U. S. 500, 48 L. Ed. 538, and General Oil Co. v. Crain, 209 U. S. 211, 52 L. Ed. 754, we would have no hesitation in holding that the cattle in transit through the South St. Paul yards, there unloaded and fed and bought and sold by dealers had sufficiently come to rest to be subject to local taxation. In the light of those cases we should say that the interstate journey of these cattle was as much interrupted by the course of business at the stockyards as was the grain in Bacon v. Illinois, the merchandise in the American Steel & Wire case, or the petroleum products in the Crain case.

In Bacon v. Ilinois, supra, the grain had been purchased in the south and had been shipped by way of Chicago to eastern points with the right to remove it from the cars at Chicago to the private grain elevator belonging to the [fol. 38] owner of the grain. There it was inspected, weighed, cleaned, clipped, dried, sacked, graded, or mixed, and grain delivered to the carriers for destinations in other states. The question there presented was whether the removal of the grain to the private elevator interrupted the continuity of the transportation and made the grain subject to local taxation. It was held that it did, and that the grain was locally dealt with in the interest of the owner while it was in his custody and was subject to his complete dispostion for a collateral business purpose of his own.

In the American Steel and Wire Company case, the merchandise was shipped from points outside the state to Memphis, there placed in a warehouse and again sorted and allocated to destinations outside the state of Tennessee. It was held that the continuity of the journey was sufficiently interrupted to subject the merchandise to local taxation. In the Crain case oil was shipped from outside the state to Memphis where it was placed in tanks of various sizes from which the oil was put in barrels or other small containers to be sold locally or in other states or to fill orders already received from customers without the state. It had certain tanks in

which the oil which had been already sold to customers in Arkansas, Louisiana and Mississippi was placed and so marked. It was held that the separating of the oil into various and different containers was itself a local business in Memphis and that its subsequent shipment made a separate interstate shipment, thus interrupting the interstate journey and permitting local taxation.

The Crain case was by a divided court with a very vigorous dissent. The comment made upon that case by the same court in the case of Carson Petroleum Company v. Vial, 279 U. S. 95, 105, indicates that the case while not specifically over-ruled, is not considered to be of controlling weight at present. In fact, as stated in the Carson Petroleum Company case there has been a liberal construction of what is continuity of the journey, in cases where the court finds from the circumstances that export trade has been actually intended and carried through. There seems to us to be a dis- [fol. 39] tinct trend in the decisions of the Supreme Court toward a more liberal construction of what constitutes interstate commerce and toward the exemption from local taxation of property in the current of that commerce. In the case of Swift and Company v. The United States, 196 U. S. 375, the court said:

"Commerce among the states is not a technical legal conception but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state with the expectation that they will end their transit after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

This case was followed by Stafford v. Wallace, 258 U. S. 495, 517, in which the court had under consideration the validity of the packers and stockyards act regulating traffic through stockyards. The court said:

"The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flow-

ing traffic that presses behind. The stockyards are but a throat through which the current flows and the transactions which occur therein are only incident to this current from the West to the East and from one state to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true but they do not stop the flow; they merely change the private interest in the subject of the current, not interfering with, but on the contrary, being indispensable to, its continuity. The origin of the livestock is in the West. Its ultimate destination, known to, and intended by all engaged in the business is in the middle West and the East either as meat products or stock for feeding and fattening. This is the definite and well understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

See also the case of Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 S. Ct. 101, 66 L. ed. 227, where the state of West Virginia sought to impose a tax of two cents a barrel on oil piped from the state to outside points through storage tanks from which the owner might divert it if desired to points within the state. The court held that the oil actually carried out of the state was exempt from the tax as being in interstate commerce while in the tanks and pipes. [fol. 40] It is quite true that the interstate commerce clause of the constitution does not give immunity to movable property from local taxation which is not discriminative unless it is in actual continuous transit in interstate commerce. Chaplain Realty Co. v. Brattleborro, 260 U. S. 366, 67 L. ed. 165, 25 A. L. R. 1195. But quite clearly the Supreme Court regards the passage through the stockyards and the transfer and temporary holding of title therein by the registered dealers as an essential part of the continuity of the transit of the cattle in interstate commerce from west to east That court does not seem to consider as important the fact that a part of the property

flowing in interstate commerce may be diverted from that commerce to intra-state destinations. In the case of United Fuel Gas Company v. Hallanan, 257 U. S. 277, 66 L. ed. 234, natural gas was piped from West Virginia points to points outside the state, but might be diverted at storage points to places within the state according to the desire of the owner of the gas. The court said:

"In short, the great body of the gas starts for points outside the state and goes to them. That the necessities of business require a much smaller amount destined to points within the state to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff, as owner of the gas, and the purchasers, after they receive it, might change their minds before the gas leaves the state; and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the states and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow, ending, as contemplated from the beginning, beyond the state line."

Citing cases. See also Eureka Pipeline Company v. Hallanan, 257 U. S. 265, 66 L. ed. 227, where the court said:

"As has been repeated many times, interstate commerce is a practical conception, and, as remarked by the court of first instance, a tax, to be valid, 'must not, in its practical effect and operation, burden interstate commerce.' It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived."

[fol. 41] In the light of the views expressed by the Supreme Court in Stafford v. Wallace, and in the Swift and Company case, it is our opinion that the learned trial court erred in holding that these cattle had sufficiently come to

rest to subject them to the taxing power of this state and in so far as the judgment relates to the taxes upon the cattle it is reversed.

2. The second question is whether or not the membership in the Traders' Livestock Exchange is personal property and taxable. Though the membership in the Traders' exchange is not so valuable and does not confer so many privileges as did the membership of the Duluth Board of Trade involved in the case of State v. S. A. McPhail, 124 Minn. 398, 145 N. W. 108, we regard that case as controlling on the question here presented. The membership in the Traders' Exchange is a valuable piece of property. It confers a certain standing upon the member and in a measure affects his trading and dealing with livestock in the yard. It passes by purchase and it has a well understood value in the market. On this branch of the case we affirm the judgment of the trial court.

Judgment modified.

Loring, J.

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[fol. 42] IN SUPREME COURT OF MINNESOTA

29017

STATE OF MINNESOTA, Respondent,

vs.

GEORGE E. BLASIUS, Appellant

JUDGMENT—Filed Jan. 3, 1933

Pursuant to an order of Court heretofore duly made and entered in this cause, it is determined and adjudged that the judgment of the Court below herein appealed from, to-wit, of the District Court within and for the County of Dakota, be, and the same hereby is, in all things modified in accordance with opinion filed.

Dated and signed Jan. 3, 1933.

By the Court.

Attest: Grace Kaercher Davis, Clerk.

[File endorsement omitted.]

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[fol. 43] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed April 17, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.